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DATE FILED: 7/28/2022

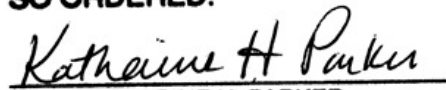
hhechtkopf@hnrklaw.com

July 27, 2022

VIA E-MAIL

Honorable Katharine H. Parker
 United States Magistrate Judge
 Daniel Patrick Moynihan
 United States Courthouse
 500 Pearl Street
 New York, NY 10007

Plaintiff shall file a letter on ECF by
Tuesday, August 2, 2022 stating its
 position on Defendant's below request for
 the Court to grant it permission to amend
 its RFA response.

SO ORDERED:


HON. KATHARINE H. PARKER
UNITED STATES MAGISTRATE JUDGE 7/28/2022

Re: *Cintron v. Albert Einstein College of Medicine et al.*, No. 1:21-cv-06256-JGK

Dear Judge Parker,

We represent Defendants in the above-captioned matter, and write to respectfully request that the Court grant Defendants permission, pursuant to F.R.C.P. 36(b), to amend one response to Plaintiff's Requests for Admission ("RFA") propounded upon Defendants on April 8, 2022.

RFA No. 2 requested that Defendants "Admit Ms. Cintron disclosed to Ben-Ari, Tartarone, Cancellieri, and Cotton, prior to her termination, that she suffers from physical health conditions, including Systemic Lupus Erythematosus ("Lupus"), Fibromyalgia, and/or blepharospasms (eye spasms)." Defendants responded to the RFAs on May 9, 2022, stating that "Defendants admit that at a meeting taking place between the Plaintiff, Ms. Tartarone, and Mr. Ben-Ari on December 23, 2019, Plaintiff stated that she had lupus."

On that same date, during the deposition of Defendant Joseph Ben-Ari, it came to Defendants' attention that the response inadvertently contained Mr. Ben-Ari's name – both he, and Ms. Tartarone at her deposition on July 25, 2022, testified that Mr. Ben-Ari was not at the meeting at which Ms. Cintron told Ms. Tartarone that she had lupus. Mr. Ben-Ari testified that he was not aware, during the time that Ms. Cintron worked at the Albert Einstein College of Medicine, that she had lupus. *See* Exhibit A (Ben-Ari Dep. Tr. 287:14-289:12).

Defendants therefore respectfully request that the Court grant them permission to amend the RFA response to accord with the deposition testimony of the two witnesses. This amendment would be consistent with instruction of FRCP 36(b), that a court may "permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintain or defending the action on the merits." There is no prejudice to the Plaintiff here, as there is no dispute that Ms. Tartarone was aware that the Plaintiff has lupus, and Mr. Ben-Ari corrected the RFA's misstatement on the same

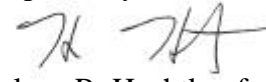
Katherine Gabriel, Esq.
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HOGUET NEWMAN
REGAL & KENNEY, LLP

day that the RFA response was served. In light of the inaccuracy of Defendants' responses to Request for Admission No. 2 in the absence of amendment and the lack of prejudice inflicted upon Plaintiff by amendment, the Court should grant Defendants' request for leave to amend. *See Chartwell Therapeutics Licensing LLC v. Citron Pharma LLC*, No. 16CV3181MKBCLP, 2018 WL 3442542, at *4–5 (E.D.N.Y. July 17, 2018) (granting motion for leave to amend responses to requests for admission as “straightforward” where inaccurate responses could cause “prejudice in litigating on the merits” those issues).

We thank the Court for its time and attention to this matter.

Respectfully submitted,



Helene R. Hechtkopf

cc: **VIA E-MAIL**
All counsel of record

EXHIBIT A

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1 BEN-ARI

2 MR. WYATT: So this is Exhibit 15.

3 (Request for admission was marked

4 Exhibit 15 for identification, as of this

5 date.)

6 Q. So this is the defendants' responses

7 to the request for admission that we served on

8 defendants. You saw this document, correct?

9 A. I believe so.

10 Q. In other words, you approved, signed

11 off on the answers that are in this document,

12 correct?

13 A. I don't --

14 MS. HECHTKOPF: Objection.

15 THE WITNESS: I'm sorry.

16 MS. HECHTKOPF: You can answer, but I

17 objected.

18 A. I don't recall.

19 Q. If we go down to the bottom of the

20 document, all the way down, you understand that

21 this has been endorsed as a legal admission of

22 the defendants, am I correct?

23 MS. HECHTKOPF: Objection.

24 Q. Mr. Ben-Ari, you approved the answers

25 in this document, correct?

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1 BEN-ARI

2 A. I'm not sure. You scrolled from the

3 first page to the last page, so I'm not sure.

4 Q. I guess my question is for you did

5 you see the answers in this document?

6 A. I'm not even sure -- this is dated

7 May 9th?

8 Q. Today.

9 A. That's today.

10 Q. Yup.

11 A. I don't remember seeing a legal

12 document for some time, so I'm not sure if this

13 is the actual document that I recall seeing.

14 Q. Let's turn to No. 2. This request

15 asks defendants, including you, to admit that

16 Ms. Cintron disclosed to you, Ms. Tartarone,

17 Mr. Cancellieri, and Ms. Cotton prior to her

18 termination that she suffers from physical health

19 conditions, including systemic lupus

20 erythematosus, which is lupus for short,

21 fibromyalgia, and blepharospasms. I could be

22 mispronouncing that. Eye spasms let's call it

23 for short. Do you see that?

24 A. Yes.

25 Q. And this says that defendants admit

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1 BEN-ARI

2 that at a meeting taking place between the

3 plaintiff, Ms. Tartarone, and Mr. Ben-Ari on

4 December 23, 2019, plaintiff stated that she had

5 lupus. Do you see that?

6 A. I do.

7 Q. So you said you didn't remember one

8 way or another. Does this clarify your memory

9 that in fact she did tell you on December 23rd at

10 least that she, Ms. Cintron, had lupus?

11 A. No, it does not. And it's

12 inconsistent with the previous documents where it

13 indicated that I was not at that meeting of

14 December 23rd.

15 Q. Oh, I'm not saying one way or the

16 other what meeting specifically this was. That's

17 not -- this answer doesn't address that.

18 A. No, I have no recollection that I was

19 ever informed that she had lupus.

20 Q. Okay. So are you saying that you

21 think that this is a lie right here or just that

22 you don't remember one way or another?

23 MS. HECHTKOPF: Objection. You can

24 answer the question if you can.

25 A. I have no recollection of being

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1 BEN-ARI

2 informed that Mrs. Cintron -- Ms. Cintron had

3 lupus at any time of her tenure as an employee at

4 Einstein.

5 Q. So your testimony under oath is that

6 at the moment she was terminated, you had not

7 heard from anyone that she had lupus?

8 A. That is correct.

9 Q. And that you had not heard from

10 anyone that she had any other long-term medical

11 issue?

12 A. That is correct. Not that I recall.

13 MR. WYATT: Let's pull up the notes,

14 which will be marked as Exhibit 15 now.

15 MS. GABRIEL: We're onto 16.

16 MR. WYATT: 16.

17 (Handwritten notes were marked

18 Exhibit 16 for identification, as of this

19 date.)

20 Q. Mr. Ben-Ari, we marked this as

21 Exhibit 16 because you provided it to your

22 attorney, who provided it in redacted form to us.

23 A. Yes.

24 Q. Do you recognize this document?

25 A. I do.